IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17402 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT JIVABHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17402 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 24/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order dated 15/10/03, passed by respondent no.2, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, (for short, "the said Act") on the ground that the petitioner was involved in three different offences punishable under the Indian Penal Code.

2. It was the case against the petitioner before the detaining authority that three offences punishable u/s.379 read with s.114 of IPC were registered against the petitioner before Rajkot Taluka Police Station, Rajkot Taluka Police Station and G.E.B. Police Station at C.R.Nos.160/2003, 164/2003 and 17/2003 respectively.

3. The case against the petitioner was that he had stolen or had received stolen electric wires belonging to the Gujarat Electricity Board. Over and above the aforesaid registered offences, two unnamed witnesses had given their statements to the concerned Police Officer which was verified by the detaining authority.

3.1 The first witness has stated that the petitioner was a "bootlegger" and was involved in offences of theft of aluminium wires belonging to the Electricity Board. It has also been stated in the said statement that the petitioner used to stage quarrels with the public at large and used to extend threats to them and an atmosphere of fear was created by him.

3.2 The second witness has also given a statement to the concerned Police Officer. There he had stated that the petitioner was in a habit of not paying rickshaw charges. Therefore, when the petitioner approached him, the witness declined to take him in his rickshaw, till the payment of fare was made. Therefore, there was some quarrel between them and the petitioner took out a knife and created an atmosphere of fear in the said locality.

3.3 On the strength of the above two offences and on the strength of the statements of the two unnamed witnesses, the detention order was passed by the detaining authority.

4. The petitioner has challenged the said order on several counts. It has been contended that the petitioner was neither a "bootlegger" nor a "dangerous person". That the names of the witnesses were not

supplied to him and that the offences registered against the petitioner did not amount to a threat to public order. That, therefore, the order of detention is illegal and deserves to be quashed and set aside. The petitioner has, therefore, prayed to set aside the said order.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. The learned AGP submits affidavit of respondent no.2 which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. During the course of arguments, it has come out that the petitioner was involved in the aforesaid three offences along with co-accused, Bhimji alias Bhimo Bhikubhai Solanki. Both of them were involved in the said offences and even the statements of unnamed witnesses refer the petitioner as well as Bhimji alias Bhimo Bhikubhai Solanki. Therefore, on the strength of the said offences and unregistered cases, detention orders were passed against the petitioner and co-detenu, Bhimji alias Bhimo Bhikubhai Solanki.

7. The said detenu, Bhimji alias Bhimo Bhikubhai Solanki, had preferred S.C.A.No.15204/2003 challenging his detention on the same set of grounds. It is not much in dispute that the said matter had come up for hearing on 23/03/04, and on appreciation of the material on record, the petition was allowed and the detention order was quashed and set aside.

8. The petitioner and the said detenu are on par. Both of them were involved in the same set of offences. Even the statements of unnamed witnesses involve both of them. Therefore, both of them were sailing in the same boat. In that view of the matter, when the petition of the said detenu has been allowed and when the detention order of the said detenu has been set aside, then, on the principle of parity, this petition is also required to be allowed and the detention order is also required to be set aside.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 15/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. The detenu, Bharat Jivabhai Rathod, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule

is made absolute accordingly. Direct service permitted.

(D. P. Buch, J.)

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